

§ 400.201

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lending institution other than the Lender to which the Borrower has applied for financial assistance dated within six months of submission of the application, indicating that the Borrower was denied for substantially the same loan it is now applying for, and the reasons the Borrower was unable to obtain the financing for which it applied. In addition, the Lender applying for a guarantee under this Program must certify that it would not make the loan without the Board's guarantee.

[64 FR 57933, Oct. 27, 1999, as amended at 65 FR 70293, Nov. 22, 2000]

§ 400.201 Eligible Lender.

(a) A lender eligible to apply to the Board for a Guarantee of a loan must be:

(1) A banking institution, such as a commercial bank or trust company, subject to regulation by the Federal banking agencies enumerated in 12 U.S.C. 1813; or

(2) An investment institution, such as an investment bank, commercial finance company, or insurance company, that is currently engaged in commercial lending in the normal course of its business.

(b)(1) If more than one banking or investment institution is applying to the Board for a Guarantee of a single loan, each one of the banking or investment institutions on the application must meet the requirements to be an eligible lender set forth in paragraph (a) of this section.

(2) An application for a Guarantee of a single loan submitted by a group of banking or investment institutions, as described in paragraph (b)(1) of this section, must identify one of the banking or investment institutions applying for such loan to act as agent for all. This agent is responsible for administering the loan and shall have those duties and responsibilities required of an agent, as set forth in the Guarantee.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall be bound by all actions, and/or failures to act, of the Agent. The Board shall be entitled to rely upon such actions and/or failures to act of the Agent as binding the Lenders.

(c) Status as a Lender under paragraph (a) of this section does not assure that the Board will issue the Guarantee sought, or otherwise preclude the Board from declining to issue a Guarantee. In addition to evaluating an application pursuant to § 400.207, in making a determination to issue a Guarantee to a Lender, the Board will assess:

(1) The Agent Lender's level of regulatory capital, in the case of banking institutions, or net worth, in the case of investment institutions;

(2) Whether the Agent Lender possesses the ability to administer the loan, as required by § 400.211(b), including its experience with loans to steel companies;

(3) The scope, volume and duration of the Agent Lender's activity in administering loans;

(4) The performance of the Agent Lender's loan portfolio, including its current delinquency rate;

(5) The Agent Lender's loss rate as a percentage of loan amounts for its current fiscal year; and

(6) Any other matter the Board deems material to its assessment of the Agent Lender.

(d) A proposed loan for the purpose, in whole or in part, of refinancing existing credit provided by the Agent will not be approved unless the Board is satisfied that the Agent retains at least a substantially equivalent level of risk as a result of the refinancing.

[64 FR 57933, Oct. 27, 1999, as amended at 65 FR 24104, Apr. 25, 2000; 66 FR 53079, Oct. 19, 2001]

§ 400.202 Loan amount.

(a) The aggregate amount of loan principal guaranteed under this Program to a single Qualified Steel Company may not exceed \$ 250 million.

(b) Of the aggregate amount of loans authorized to be guaranteed and outstanding at any one time, not more than \$30 million shall be loans to iron ore companies.

§ 400.203 Guarantee percentage.

A guarantee issued by the Board may not exceed 85 percent of the amount of the principal of a loan to a Qualified Steel Company. Subject to the provisions of this part, one or more third

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parties, public or private, may guarantee repayment of part of the Unguaranteed Portion of a loan guaranteed by the Board.

[66 FR 53080, Oct. 19, 2001]

§ 400.204 Loan terms.

(a) All loans guaranteed under the Program shall be due and payable in full no later than December 31, 2005.

(b) Loans guaranteed under the Program must bear a rate of interest determined by the Board to be reasonable. The reasonableness of an interest rate will be determined with respect to current average yields on outstanding obligations of the United States with remaining periods of maturity comparable to the term of the loan sought to be guaranteed. The Board may reject an application to guarantee a loan if it determines the interest rate of such loan to be unreasonable.

(c)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Guarantee.

(2) Without limiting the Lender's or Borrower's obligations under paragraph (c) of this section, at a minimum, the loan shall be secured by:

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property acquired, improved or derived from the loan funds;

(ii) A fully perfected and enforceable security interest and/or lien in any other property of the Borrower's pledged to secure the loan, including accessions, replacements, proceeds, or property given by a third party as Security for the loan.

(3) The entire loan will be secured by the same Security with equal lien priority for the Guaranteed Portion and the Unguaranteed Portion of the loan. The Unguaranteed Portion of the loan will neither be paid first nor given any preference over the Guaranteed Portion. A Supplemental Guarantor shall not have a security interest, direct or indirect, in any asset of the Borrower or any affiliate thereof other than the Security.

(4) An Applicant's compliance with paragraph (c)(2) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the loan.

(d) An eligible Lender may assess and collect from the Borrower such other fees and costs associated with the application and origination of the loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such other fees and costs into consideration when determining whether to offer a Guarantee to the Lender.

[64 FR 57933, Oct. 27, 1999, as amended at 64 FR 72020, Dec. 23, 1999; 65 FR 70293, Nov. 22, 2000; 66 FR 53080, Oct. 19, 2001]

§ 400.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 5 p.m. EST, August 31, 2001 in the Board's offices at 1099—14th Street, NW, Suite 2600 East, Washington, DC 20005. Applications which have been provided to a delivery service with "delivery guaranteed" before 5 p.m. on August 31, 2001 will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

(b) Applications shall contain the following:

(1) A completed Form "Application for Steel Guarantee Loan";

(2) The information required for the completion of Form "Environmental Assessment and Compliance Findings for Related Environmental Laws" and attachments, as required by § 400.206(a)(2)(i)(D);

(3) All Loan Documents that will be signed by the Lender and the Borrower, if the application is approved, including all terms and conditions of, and Security or additional Security to assure the Borrower's performance under, the loan;